

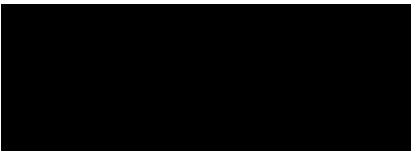
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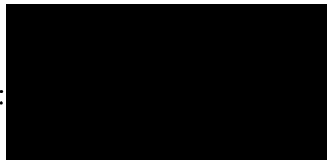


**U.S. Citizenship  
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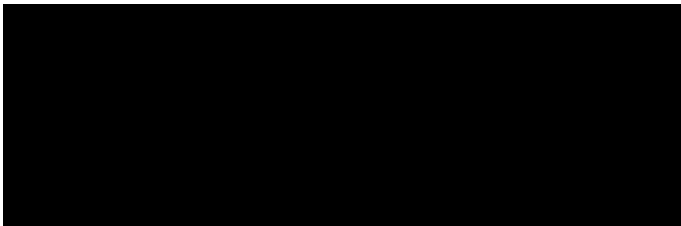
FILE: LIN 02 213 51408 Office: NEBRASKA SERVICE CENTER Date: **APR 07 2004**

IN RE: Petitioner:  
Beneficiary:



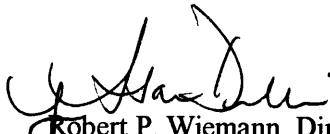
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an entrepreneur that seeks to employ the beneficiary as a budget analyst. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the petitioner failed to demonstrate that the beneficiary is qualified to perform duties in a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a budget analyst. In the petitioner's June 4, 2002 letter, it stated that it wished to hire the beneficiary because of her education and experience, and that a qualified candidate for the proffered position would possess a bachelor's degree or its equivalent in education and

experience. Although not explicitly stated, the petitioner appears to require a bachelor's degree, or its equivalent in education and experience, in accounting for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation.

On appeal, counsel states that the beneficiary is qualified to perform the duties of the proffered position. Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in accounting. Because the beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university or a foreign degree that is equivalent to a U.S. baccalaureate degree, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSII);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

Counsel submits, on appeal, copies of: (1) an evaluation from Globe Language Services, Inc.; (2) a letter explaining Dr. Fletcher's qualifications; (3) a letter from the former INS Chief of the Nonimmigrant Branch Adjudications; and (4) a letter from Al-Mass Travel and Tourism Company, the beneficiary's former employer.

According to counsel, the credentials evaluation from Globe Language Services, Inc.'s, a company that specializes in evaluating academic credentials, concluded that the beneficiary possesses the equivalent of a Bachelor of Science degree in accounting from an accredited U.S. college or university. Counsel, furthermore, states that the evaluator, Dr. George Fletcher, has authority to evaluate the beneficiary's education, training, and experience.

The AAO finds that Dr. Fletcher's evaluation is flawed because it is based upon the beneficiary's education, training, and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Counsel, moreover, claims that Dr. Fletcher qualifies as an official who has authority to grant college-level credit for training and/or experience according to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Counsel refers to Dr. Fletcher's January 25, 2001 letter stating that he is the president of Globe Language Services, Inc., a credentials evaluation service, and is also an adjunct associate professor at New York University. This letter also avers that Dr. Fletcher's recommendations in granting college-level credit are accepted by a number of universities, including New York University. Thus, counsel claims that Dr. Fletcher qualifies as an official who has authority to grant college-level credit for training and/or experience.

The AAO, however, finds that Dr. Fletcher does not qualify as an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Dr. Fletcher is the president of Globe Language Services, Inc., a credentials evaluation service, and his evaluation is submitted on the company's letterhead. As such, Dr. Fletcher is not representing himself as an official of New York University, and undoubtedly, Globe Language Services, Inc. is not an accredited college or university which has a program for granting credit based on an individual's training and/or work experience. Accordingly, the petitioner cannot equate the beneficiary's credentials to a United States baccalaureate or higher degree according to the regulation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D).

Counsel asserts that the February 23, 1995 letter from the Chief of the Nonimmigrant Branch of Adjudications states that Dr. Fletcher has authority to evaluate the beneficiary's education, training, and experience. Counsel's assertion is without merit. The letter merely states, in part, that the Immigration and Naturalization Service, now CIS, honors evaluations from all educational credential evaluations services. The letter does not avow that Dr. Fletcher qualifies as an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>1</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains an evaluation of the beneficiary's education from two credentials evaluation services – WES Credential Evaluation Report and the International Credentials Evaluation and Translation Service. The evaluation from WES Credential Evaluation Report concluded that the beneficiary's Technical Diploma in Accounting from The Institution of Administration is the U.S. equivalent to two years of undergraduate study in accounting at a regionally accredited institution. The evaluation from the International Credentials Evaluation and Translation Service found the beneficiary's Technical Diploma in Accounting equivalent to the completion of two years of academic study toward a baccalaureate degree from an accredited institution of tertiary education in the United States. The record also contains three employment letters from Al-Mass Travel & Tourism Co.: one dated November 24, 2001, another September 25, 2002, and the last February 21, 2003.

The AAO now considers the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty – in this case budget analysis. As described in the first letter from Dr. Salman Daud, the owner and managing director of Al-Mass Travel and Tourism, the beneficiary's duties primarily entailed preparing, analyzing, and monitoring budgets. In carrying out such duties, Dr. Daud stated that the beneficiary reviewed credit and debit entries, corporate reports, accounting records, and cost and expenditure ledgers; determined corporate revenue and expense; projected long-term corporate financial requirements; recommended methods of increasing income and decreasing costs; analyzed credit/debit notes; and performed cash flow reviews.

The second letter by Dr. Salman Daud stated that he holds a Ph.D. degree in business accounting and corporate budgeting from the Sorbouneu University in Paris, France, and has extensively trained the beneficiary during her years of employment. Dr. Daud stated that the beneficiary's direct supervisor holds a degree from Essex College in Great Britian, and is a chartered accountant. This letter stated that the beneficiary analyzed spending behavior and planned future operations, examined ways to improve efficiency and increase profits, and distribute funds. Her major responsibility, the letter averred, was to provide advice and technical assistance in preparing monthly and annual budgets. The letter claimed that she and her

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<sup>1</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

supervisor examined the monthly budget estimates or proposals for completeness, accuracy, and conformance with established procedures, regulations and organizational objectives. Dr. Daud stated that the beneficiary helps the Chief Operating Officer, her direct supervisor, to analyze the proposed plan and advise possible alternatives if the projected results are unsatisfactory. One of the beneficiary's major roles, the letter stated, is to write a report on a monthly basis if a deviation appears between the approved budget and actual performance, she provides in her report the causes of variations along with recommendations for new or reviewed budget procedures. Finally, the letter claimed that the beneficiary supervised cost accounting activities, revenue analysis, and receivables. The last letter summarized the second letter's contents. According to these letters, the beneficiary was employed with Al-Mass Travel and Tourism for seven years and five months.

The AAO finds that the second letter recites *verbatim* a significant number of phrases and sentences from the 2002-2003 edition of the *Handbook*, leading the AAO to question the letter's purported value. For example, the letter claims that the beneficiary examined ways to "improve efficiency and increase profits"; provided "advice and technical assistance" in preparing budgets; examined the monthly budget "estimates or proposals for completeness, accuracy, and conformance with established procedures, regulations and organizational objectives"; "analyze[d] the proposed plan and advise[d] possible alternatives if the projected results are unsatisfactory"; and wrote reports on a monthly basis if a "deviation appears between the approved budget and actual performance, she provides in her report the causes of variations along with recommendations for new or reviewed budget procedures."

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These uncanny similarities lead the AAO to question the evidentiary value of all of the employment verification letters. As such, the employment letters from Al-Mass Travel and Tourism carry little or no weight in these proceedings. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is budget analysis.

Finally, the evaluator from the Globe Language Services, Inc. seems to qualify as a "recognized authority"; however, the evaluation relied upon the beneficiary's Al-Mass Travel and Tourism employment letters. As previously discussed, these employment letters carry little or no weight in these proceedings. Accordingly, the evaluation from Globe Language Services, Inc. would also carry little or no weight in these proceedings.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO does not find that the proffered position is a specialty occupation because the petitioner has not clearly defined the beneficiary's proposed duties. However, as the AAO is dismissing the appeal on another ground, it will not examine this issue further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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**ORDER:**      The appeal is dismissed. The petition is denied.